

1 FOX & ROBERTSON, P.C.
2 Timothy P. Fox, Cal. Bar No. 157750
3 910 - 16th Street
4 Suite 610
5 Denver, Colorado 80202
6 Tel: (303) 595-9700
7 Fax: (303) 595-9705

8 Attorneys for Plaintiffs

9 **IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10 FRANCIE E. MOELLER,

11 EDWARD MUEGGE,

12 KATHERINE CORBETT,

13 and

14 CRAIG THOMAS YATES

15 Plaintiffs,

16 v.

17 TACO BELL CORP.,

18 Defendant.

Case No. C 02 5849 MJJ ADR

**FIRST AMENDED
CLASS ACTION COMPLAINT
DEMAND FOR JURY TRIAL**

19 Plaintiffs Francie Moeller, Edward Muegge, Katherine Corbett and Craig Thomas

20 Yates, by and through their attorneys Fox & Robertson, P.C., hereby submit their First

21 Amended Class Action Complaint for violations of Title III of the Americans with Disabilities

22 Act, 42 U.S.C. § 12181, et seq., (“ADA”), the Unruh Civil Rights Act, Cal. Civ. Code, § 51, et

23 seq. (“the Unruh Act”), and the California Disabled Persons Act, Cal. Civ. Code, § 54, et seq.

24 (the “CDPA”).

25
26 Case No. C 02 5849 MJJ ADR
First Amended Class Action Complaint

INTRODUCTION

1
2 1. Over twelve years after Congress passed one of our nation's landmark civil
3 rights law for people with disabilities, Defendant's restaurants in California still maintain
4 barriers that prevent customers who use wheelchairs or scooters from the full, independent and
5 equal enjoyment of Defendant's goods and services.

6 2. Defendant has been and is in violation of federal and state disability civil rights
7 laws, in that it has failed to comply with federal and state nondiscrimination statutes.

8 3. Defendant has discriminated and continues to discriminate against Plaintiffs in
9 many ways, including but not limited to failing to ensure that its restaurants are accessible to
10 individuals with mobility impairments who require wheelchairs or scooters for mobility.

JURISDICTION AND VENUE

11
12 4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
13 §§ 1331 and 1343, and pursuant to its supplemental jurisdiction over Plaintiffs' claims brought
14 under the laws of the State of California. The Court may grant declaratory and other relief
15 pursuant to 28 U.S.C. §§ 2201 and 2202. Money damages alone are inadequate, and Plaintiffs
16 have been suffering and will continue to suffer irreparable injury.

17 5. Venue is proper within this District pursuant to 28 U.S.C. § 1391(b).

INTRADISTRICT ASSIGNMENT

18
19 6. This action arises in the county of Sonoma, Contra Costa and/or Marin and thus
20 should be assigned to the San Francisco or Oakland Division.

PARTIES

21
22 7. Plaintiff Francie E. Moeller is and has been at all times material hereto a
23 resident of the State of California.

24 8. Ms. Moeller has a degenerative disc, spondylosis, fibromyalgia, and functional
25 thoracic outlet syndrome, which affect her muscles and tissue. Ms. Moeller has physical

1 impairments that substantially limit several major life activities, including but not limited to
2 walking. She has a record of physical impairments that substantially limit several major life
3 activities and is regarded as having physical impairments that substantially limit several major
4 life activities. Ms. Moeller uses a scooter for her primary means of mobility outside of her
5 home and has a disability within the meaning of the ADA. 42 U.S.C. § 12102(2)(A).

6 9. Ms. Moeller has a physical disability and/or medical condition as those terms
7 are defined in applicable California law, including Cal. Gov't Code § 12926.

8 10. Plaintiff Katherine J. Corbett is and has been at all times material hereto a
9 resident of the State of California.

10 11. Ms. Corbett has post polio syndrome. Ms. Corbett has physical impairments
11 that substantially limit several major life activities, including but not limited to walking. She
12 has a record of physical impairments that substantially limit several major life activities and is
13 regarded as having physical impairments that substantially limit several major life activities.
14 Ms. Corbett uses a power wheelchair for her primary means of mobility outside of her home
15 and has a disability within the meaning of the ADA. 42 U.S.C. § 12102(2)(A).

16 12. Ms. Corbett has a physical disability and/or medical condition as those terms
17 are defined in applicable California law, including Cal. Gov't Code § 12926.

18 13. Plaintiff Edward Muegge is and has been at all times material hereto a resident
19 of the State of California.

20 14. As a result of a spinal cord injury, Mr. Muegge has physical impairments that
21 substantially limit several major life activities, including but not limited to walking. He has a
22 record of physical impairments that substantially limit several major life activities and is
23 regarded as having physical impairments that substantially limit several major life activities.
24 Mr. Muegge uses a power scooter for his primary means of mobility and has a disability within
25 the meaning of the ADA. 42 U.S.C. § 12102(2)(A).

1 15. Mr. Muegge has a physical disability and/or medical condition as those terms
2 are defined in applicable California law, including Cal. Gov't Code § 12926.

3 16. Plaintiff Craig Thomas Yates is and has been at all times material hereto a
4 resident of the State of California.

5 17. As a result of a spinal cord injury, Mr. Yates has physical impairments that
6 substantially limit several major life activities, including but not limited to walking. He has a
7 record of physical impairments that substantially limit several major life activities and is
8 regarded as having physical impairments that substantially limit several major life activities.
9 Mr. Yates uses a power wheelchair for his primary means of mobility and has a disability
10 within the meaning of the ADA. 42 U.S.C. § 12102(2)(A).

11 18. Mr. Yates has a physical disability and/or medical condition as those terms are
12 defined in applicable California law, including Cal. Gov't Code § 12926.

13 19. Defendant Taco Bell Corp. ("TBC") is a corporation incorporated under the
14 laws of California, with its principal place of business at 17901 Von Karman, Irvine, CA
15 92614. TBC owns, operates, leases and/or leases to Taco Bell restaurants in California,
16 including combination restaurants in which Taco Bell products and products of other
17 restaurants (for example, Kentucky Fried Chicken) are sold.

18 **CLASS ACTION ALLEGATIONS**

19 20. Plaintiffs Moeller, Muegge, Yates and Corbett seek to maintain this action as a
20 class action under Rule 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure.
21 The class consists of all individuals with disabilities who use wheelchairs or electric scooters
22 for mobility who, during a time period to be determined by this Court, were denied, or are
23 currently being denied, on the basis of disability, full and equal enjoyment of the goods,
24 services, facilities, privileges, advantages, or accommodations of any Taco Bell restaurant in
25 California that was designed or constructed by, or is owned, operated, leased by, or leased to,

1 Defendant.

2 21. The class identified in paragraph 20 is believed to consist of well over 1,000
3 members who are dispersed across the State of California. Joinder of all of such class
4 members in this lawsuit is impracticable.

5 22. There are numerous questions of law and fact common to the class, including
6 without limitation, the following:

- 7 a. Whether Taco Bell restaurants in California are “public
8 accommodations” under the ADA;
- 9 b. Whether Taco Bell restaurants in California are “business
10 establishments” under the Unruh Act;
- 11 c. Whether Taco Bell restaurants in California are “places of public
12 accommodation” or “places to which the general public is invited” under
13 the CDPA;
- 14 d. Whether Taco Bell restaurants in California deny the full and equal
15 enjoyment of their goods, services, facilities, privileges, advantages, or
16 accommodations to people who use wheelchairs in violation of the
17 ADA;
- 18 e. Whether Taco Bell restaurants in California deny full and equal
19 accommodations, advantages, facilities, privileges, or services to people
20 who use wheelchairs, in violation of the Unruh Act;
- 21 f. Whether Taco Bell restaurants in California deny full and equal access
22 to accommodations, advantages and facilities to people who use
23 wheelchairs, in violation of the CDPA;
- 24 g. What measures are legally required to bring Taco Bell restaurants in
25 California into compliance with the ADA, the Unruh Act and the

1 CDPA;

2 h. Whether the design features at issue in this case -- which exist at many
3 Taco Bell restaurants -- violate state or federal law.

4 23. The claims of Plaintiffs Moeller, Muegge, Yates and Corbett are typical of the
5 claims of the members of the class. They -- like all other members of the class -- use a
6 wheelchair or scooter for mobility and claim Defendant has violated the ADA, the Unruh Act
7 and the CDPA by failing to make its Taco Bell restaurants accessible to people who use
8 wheelchairs.

9 24. Plaintiffs Moeller, Muegge, Yates and Corbett will fairly and adequately protect
10 the interests of the class because they have retained counsel with extensive experience in
11 litigation, including class action litigation. In addition, Plaintiffs' counsel, Timothy Fox, was
12 class counsel in a Colorado class action under the ADA concerning Taco Bell restaurants.
13 Finally, Plaintiffs Moeller, Muegge, Yates and Corbett have no interests that conflict in any
14 way with those of the class.

15 25. This action may be maintained as a class action pursuant to Rule 23(b)(2)
16 because the Defendant's violations of the ADA, the Unruh Act and the CDPA are applicable to
17 all members of the class. Therefore, an injunction requiring compliance with the ADA, the
18 Unruh Act and the CDPA is appropriate and the primary relief sought is injunctive relief.

19 26. This action may be maintained as a class action pursuant to Rule 23(b)(3)
20 because the many questions of law and fact which are common to class members clearly
21 predominate over individual questions affecting members of the class. The common issues of
22 law and fact relate to issues central to the case, such as whether Taco Bell restaurants in
23 California are public accommodations and business establishments, whether removing or
24 widening the narrow queue lines, lowering counters and otherwise complying with the ADA in
25 stores built prior to the effective date of the ADA is readily achievable for the Defendant, and

1 whether Defendant has violated the Unruh Act and the CDPA.

2 27. A class action is superior to other available methods for the fair and efficient
3 adjudication of this controversy because the damages suffered by individual class members are
4 relatively small and because the burden upon such individual litigants may make it difficult
5 and impractical for them to pursue their claims against Defendant.

6 28. Judicial economy will be served by maintenance of this lawsuit as a class action
7 in that it is likely to avoid the burden which would be otherwise placed upon the judicial
8 system by the filing of numerous similar suits by disabled people in the region. There are no
9 obstacles to effective and efficient management of this lawsuit as a class action by this Court.

10 **STATEMENT OF FACTS**

11 29. Within the twelve months prior to the filing of this Complaint, Ms. Moeller has
12 attempted to patronize the Taco Bell restaurant located at 1416 Farmers Lane in Santa Rosa,
13 California.

14 30. On information and belief, this Taco Bell restaurant is owned and/or operated
15 by TBC.

16 31. At the Farmers Lane Taco Bell restaurant, Ms. Moeller encountered barriers to
17 access, including without limitation a “queue line” (a series of fixed barriers designed to cause
18 patrons to form a single line) that was too narrow for her scooter to navigate, inaccessible soda
19 machines, and condiments that were inaccessible to her.

20 32. Ms. Moeller has experienced discrimination at other Taco Bell restaurants in the
21 state of California.

22 33. Within the twelve months prior to the filing of this Complaint, Ms. Corbett has
23 attempted to patronize the Taco Bell restaurant located on San Pablo Dam Road in Richmond,
24 California.

25 34. On information and belief, this Taco Bell restaurant is owned and/or operated

1 by TBC.

2 35. At the Richmond Taco Bell restaurant, Ms. Corbett encountered barriers to
3 access, including without limitation a queue line that was too narrow for her wheelchair to
4 navigate and inaccessible parking.

5 36. Ms. Corbett has experienced discrimination at other Taco Bell restaurants in the
6 state of California.

7 37. Within the twelve months prior to the filing of this Complaint, Mr. Muegge has
8 attempted to patronize Taco Bell restaurants located at 1416 Farmers Lane and 2000 Santa
9 Rosa Avenue in Santa Rosa, California, as well as the Taco Bell restaurants located at 5000
10 Redwood Drive and 1700 East Cotati Avenue in Rohnert Park, California.

11 38. On information and belief, these Taco Bell restaurants are owned and/or
12 operated by TBC.

13 39. At each of these restaurants, Mr. Muegge encountered one or more of the
14 following accessibility barriers: inaccessible queue lines, inaccessible parking areas, and
15 inaccessible seating areas.

16 40. Mr. Muegge has experienced discrimination at other Taco Bell restaurants in
17 the state of California.

18 41. Within the twelve months prior to the filing of this Complaint, Mr. Yates has
19 attempted to patronize the Taco Bell restaurant located at 180 Rowland Way in Novato,
20 California.

21 42. On information and belief, this Taco Bell restaurant is owned and/or operated
22 by TBC.

23 43. At the Novato Taco Bell restaurant, Mr. Yates encountered barriers to access,
24 including without limitation a queue line that was too narrow for his wheelchair to navigate.

25 44. Mr. Yates has experienced discrimination at other Taco Bell restaurants in the

1 state of California.

2 45. On information and belief, numerous other California Taco Bell restaurants that
3 were designed or constructed by, or that are owned, operated, or leased by, or leased to,
4 Defendant are in violation of the ADA, the Unruh Act and the CDPA.

5 46. On information and belief, Taco Bell restaurants are built according to one of a
6 limited number of design prototypes. As such, on information and belief, the discriminatory
7 design features encountered by Plaintiffs recur in Taco Bell restaurants throughout California.

8 47. On information and belief, since January 26, 1992, some or all of the Taco Bell
9 restaurants in California have undergone alterations, as that term is used in the ADA, that
10 affected, or could have affected, the usability of part or all of those restaurants.

11 48. On information and belief, since July 1, 1970, some or all of the Taco Bell
12 restaurants in California have undergone alterations, structural repairs and/or additions, as
13 those terms are used in California law, including without limitation Cal. Health & Safety Code
14 § 19959.

15 49. All four Plaintiffs have patronized Taco Bell restaurants in California in the past
16 and intend to continue to patronize those restaurants in the future.

17 **FIRST CLAIM FOR RELIEF**
18 **(Americans with Disabilities Act)**

19 50. Plaintiffs reallege and incorporate by reference the remainder of the allegations
20 set forth in this Complaint as if fully set forth herein.

21 51. Title III of the ADA provides that “No individual shall be discriminated against
22 on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
23 privileges, advantages, or accommodations of any place of public accommodation by any
24 person who owns, leases (or leases to), or operates a place of public accommodation.”

25 52. Defendant owns, operates, leases and/or leases to Taco Bell restaurants in

1 California.

2 53. Defendant's Taco Bell restaurants are places of public accommodation. 42
3 U.S.C. § 12181(7)(B).

4 54. Defendants have discriminated against Plaintiffs and members of the proposed
5 class on the basis of disability. Defendants' discriminatory conduct includes but is not limited
6 to:

- 7 a. Discriminatory exclusion and/or denial of goods, services, facilities,
8 privileges, advantages, accommodations, and/or opportunities;
- 9 b. Provision goods, services, facilities, privileges, advantages, and/or
10 accommodations that are not equal to those afforded non-disabled
11 individuals;
- 12 c. Failing to make reasonable modifications in policies, practices, and/or
13 procedures as necessary to afford the goods, services, facilities,
14 privileges, advantages, and/or accommodations of the Sundowner to
15 individuals with disabilities;
- 16 d. Failing to design and/or construct restaurants built for first occupancy
17 after January 26, 1993 so that they are readily accessible to and usable
18 by individuals with disabilities;
- 19 e. Failing to make alterations in such a manner that, to the maximum
20 extent feasible, the altered portions of the restaurants are readily
21 accessible to and usable by individuals with disabilities, including
22 individuals who use wheelchairs;
- 23 f. Failing to make alterations in such a manner that, to the maximum
24 extent feasible, the path of travel to the altered area and the bathrooms,
25 telephones, and drinking fountains serving the altered area, are readily

1 accessible to and usable by individuals with disabilities; and/or

2 g. Failing to remove barriers to individuals with disabilities where it would
3 be readily achievable to do so.

4 55. As such, Defendants discriminate and, in the absence of the injunction
5 requested herein, will continue in the future to discriminate against Plaintiffs and members of
6 the proposed class on the basis of disability in the full and equal enjoyment of the goods,
7 services, facilities, privileges, advantages, accommodations and/or opportunities of Taco Bell
8 restaurants in California in violation of Title III of the Americans with Disabilities Act, 42
9 U.S.C. § 12181 et seq. and/or its implementing regulations.

10 56. Defendant's violations of the ADA have harmed and will continue to harm
11 Plaintiffs and members of the proposed class in the future.

12 57. Pursuant to the remedies, procedures, and rights set forth in 42 U.S.C. § 12188,
13 Plaintiffs pray for judgment as set forth below.

14 **SECOND CLAIM FOR RELIEF**
15 **(Unruh Civil Rights Act)**

16 58. Plaintiffs reallege and incorporate by reference the remainder of the allegations
17 set forth in this Complaint as if fully set forth herein.

18 59. Defendant operates business establishments within the jurisdiction of the State
19 of California and, as such, is obligated to comply with the provisions of the Unruh Act, Cal.
20 Civ. Code, § 51, et seq. ("the Unruh Act").

21 60. The conduct alleged herein violates the Unruh Act, including Cal. Civ. Code,
22 § 51, et seq.

23 61. The Unruh Act guarantees, inter alia, that persons with disabilities are entitled
24 to full and equal accommodations, advantages, facilities, privileges, or services in all business
25 establishments of every kind whatsoever within the jurisdiction of the State of California. The

1 Unruh Act also provides that a violation of the ADA is a violation of the Unruh Act.

2 62. Defendant has violated the Unruh Act by, inter alia, denying Plaintiffs and
3 members of the proposed class, as persons with disabilities, full and equal accommodations,
4 advantages, facilities, privileges, or services offered by Defendant. Defendant has also
5 violated the Unruh Act by violating the ADA, as set forth above.

6 63. Defendant has violated the Unruh Act by, inter alia, failing to operate its
7 services on a nondiscriminatory basis and failing to ensure that persons with disabilities have
8 nondiscriminatory access to its restaurants.

9 64. Pursuant to the remedies, procedures, and rights set forth in Cal. Civ. Code
10 § 52, Plaintiffs pray for judgment as set forth below.

11 65. In doing the acts and/or omissions alleged herein, Defendant wrongfully and
12 unlawfully denied access to its restaurants and their facilities to individuals with disabilities
13 and acted with knowledge of the effect its conduct was having on physically disabled persons.

14 **THIRD CLAIM FOR RELIEF**
15 **(California Disabled Persons Act)**

16 66. Plaintiffs reallege and incorporate by reference the remainder of the allegations
17 set forth in this Complaint as if fully set forth herein.

18 67. Defendant operates, within the jurisdiction of the State of California, places of
19 public accommodation and/or places to which the general public is invited and, as such, is
20 obligated to comply with the provisions of the CDPA, Cal. Civ. Code, § 54, et seq.

21 68. The conduct alleged herein violates the CDPA, including without limitation
22 Cal. Civ. Code, § 54.1, et seq. and relevant provisions of California building code regulations.

23 69. The CDPA guarantees, inter alia, that persons with disabilities are entitled to
24 full and equal access, as other members of the general public, to accommodations, advantages,
25 facilities, and privileges of covered entities.

7. That this Court award Plaintiffs' reasonable attorneys' fees and costs pursuant to federal and California law.

8. That this Court award such additional or alternative relief as may be just, proper and equitable.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury on all issues which can be heard by a jury.

Respectfully submitted,

FOX & ROBERTSON, P.C.

By: /s/ Timothy P. Fox
Timothy P. Fox
910 - 16th Street
Suite 610
Denver, CO 80202
303.595.9700

Dated: August 4, 2003

Attorneys for Plaintiffs